

FCM

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

AMY PALMER

Plaintiff,

v.

CHAMPION MORTGAGE

Defendant.

04 11954 RCL

C.A.

MAGISTRATE JUDGE Cohen

RECEIPT # \_\_\_\_\_  
AMOUNT \$ 150  
SUMMONS ISSUED yes  
LOCAL RULE 4.1 \_\_\_\_\_  
WAIVER FORM \_\_\_\_\_  
MCF ISSUED \_\_\_\_\_  
BY DPTY. CLK. FCM  
DATE 9/8/04

**COMPLAINT**

**INTRODUCTION**

1. This action seeks redress against Champion Mortgage for violations of the Truth in Lending Act, 15 U.S.C. § 1601 et seq. ("TILA") and implementing Federal Reserve Board Regulation Z, 12 C.F.R. part 226 and it's Massachusetts counterparts, Massachusetts Consumer Credit Cost Disclosure Act ("CCCCDA"), Mass. G.L. ch. 140D §§1-34, and 209 C.M.R. part 32.

**JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction over this action under 15 U.S.C. §1640 (TILA), and 28 U.S.C. §§1331 ( general jurisdiction), 1332 ( diversity jurisdiction) and 1337 ( interstate commerce) and 1367 ( supplemental jurisdiction). Diversity jurisdiction is applicable as the Plaintiff is resident of Massachusetts and seeks rescission of a \$220,000.00 mortgage obligation held by an out of state corporation that does not have it's principle place of business in Massachusetts.

3. Venue in this District is proper under 28 U.S.C. § 1391(b) and (c) because Defendant does business in this District. Defendant is therefore deemed to reside in this District under 28

U.S.C. § 1391( c).

### **PARTIES**

4. Plaintiff Amy Palmer resides at 75 Holmes Street, Halifax, MA 02338.

5. Defendant Champion is a National corporation with its principle place of business at 2 Gatehall Drive, Parsippany, NJ 07054.

6. Champion enters into more than 5 transactions per year in which credit is extended that is secured by the principal residence of a consumer and is used for purposes other than the initial acquisition or construction of the residence.

7. Champion is therefore a creditor as defined in TILA and implementing Federal Reserve Board Regulation Z.

8. Champion is what is commonly known as a “subprime” lender, targeting persons who have or who believe they have impaired credit.

### **FACTS**

9. On or about March 28, 2003, Plaintiff obtained a loan from Champion, secured by her residence, for the purpose of debt consolidation. All of the proceeds of the loan were used for personal, family or household purposes.

10. In connection with the transaction, the plaintiff attended a closing at the law office of Topkins and Bevans at 155 Grossman Drive, Suite 401, Braintree, MA 02184 and signed the following documents.

1. A note in the principal amount of \$220,000.00;
2. A mortgage;
3. A Truth in Lending statement; and

4. A HUD-1 Settlement Statement.

11. The plaintiff was not provided with any of the required material disclosures of 15 U.S.C. §1602(u) and its Massachusetts counterpart at the time of the closing. In fact, the plaintiff left the closing attorney's office without any of the statutorily required disclosures. The Plaintiff did not receive the required material disclosures and copies of other pertinent closing documentation until several days after the consummation of the loan.

12. Because the transaction was secured by Plaintiff's home, and was not entered into for purposes of the initial acquisition or construction of that home, it was subject to the right to cancel provided by 15 U.S.C. §1635 and 12 C.F.R. §226.23.

Section 226.23 of 15 U.S.C. §1635 provides:

**(a) Consumer's right to rescind.**

**(1) In a credit transaction in which a security interest is or will be retained or acquired in a consumer's principal dwelling, each consumer whose ownership interest is or will be subject to the security interest shall have the right to rescind the transaction, except for transactions described in paragraph (f) of this section.[fn]47**

**(2) To exercise the right to rescind, the consumer shall notify the creditor of the rescission by mail, telegram or other means of written communication. Notice is considered given when mailed, when filed for telegraphic transmission or, if sent by other means, when delivered to the creditor's designated place of business.**

**(3) The consumer may exercise the right to rescind until midnight of the third business day following consummation, delivery of the notice required by paragraph (b) of this section, or delivery of all material disclosures,[fn]48 whichever occurs last. If the required notice or material disclosures are not delivered, the right to rescind shall expire 3 years after consummation, upon transfer of all of the consumer's interest in the property, or upon sale of the property, whichever occurs first. In the case of certain administrative proceedings, the rescission period shall be extended in accordance with section 125(f)**

of the Act. [15 U.S.C. §1635(f)]

(4) When more than one consumer in a transaction has the right to rescind, the exercise of the right by one consumer shall be effective as to all consumers.

(b) **Notice of right to rescind.** In a transaction subject to rescission, a creditor shall deliver 2 copies of the notice of the right to rescind to each consumer entitled to rescind. The notice shall be on a separate document that identifies the transaction and shall clearly and conspicuously disclose the following:

(1) The retention or acquisition of a security interest in the consumer's principal dwelling.

(2) The consumer's right to rescind the transaction.

(3) How to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business.

(4) The effects of rescission, as described in paragraph (d) of this section.

(5) The date the rescission period expires. . . .

(f) **Exempt transactions.** The right to rescind does not apply to the following:

(1) A residential mortgage transaction [defined in 15 U.S.C. §1602(w) as one where a "security interest is created or retained against the consumer's dwelling to finance the acquisition or initial construction of such dwelling"].

(2) A credit plan in which a state agency is a creditor.

13. On or about August 6, 2004, the Plaintiff exercised her extended right to rescind the loan for violations of TILA and Massachusetts counterparts. A notice of rescission was sent via certified mail to Champion's Agent, Topkins and Bevans. A Copy of the notice is attached as Exhibit A.

14. Champion failed to respond to Plaintiff's request to rescind the mortgage.

**COUNT I**

**TRUTH IN LENDING ACT VIOLATIONS**

15. Plaintiff incorporates ¶¶ 1-14 as if fully set out herein.

16. By failing to provide the material disclosures , Champion violated TILA and the Massachusetts counterparts.

17. By failing to provide the Notice of Right to Cancel form at the closing, Champion failed to give Plaintiff clear and conspicuous notice of her right to cancel, in violation of 15 U.S.C. §1635 and 12 C.F.R. § 226.23 and accordingly, the Plaintiff is entitled to rescind the mortgage.

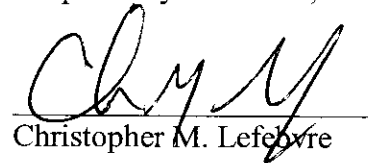
18. 15 U.S.C. § 1635(g) provides that a court may award damages under section 1640 in addition to rescission. Mass .G.L. ch. 140D § 10(g) is identical except for citation.

19. The failure of the Defendant to respond to the notice of rescission is a separate violation of 15 U.S.C. § 1640 (a) and Mass .G.L. ch. 140D § 32 entitling the Plaintiff to an award of statutory damages.

WHEREFORE, Plaintiff requests that the Court enter judgment in favor of Plaintiff and against Defendant Champion as follows:

1. A declaration that Plaintiff is entitled to rescind;
2. Rescission of the loan;
3. Statutory damages;
4. Attorney's fees, litigation expenses and costs.
5. Such other relief as the Court deems appropriate.

Respectfully submitted,

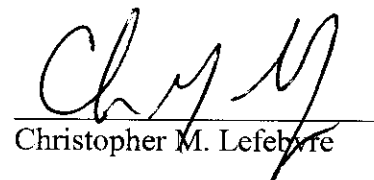


Christopher M. Lefebvre

Claude Lefebvre, Christopher Lefebvre P.C.  
P.O. Box 479  
Pawtucket, RI 02862  
(401) 728-6060  
(401) 728-6534 (FAX)  
BBO# 629056

**JURY DEMAND**

Plaintiff demands trial by jury.



Christopher M. Lefebvre

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS1. Title of case (name of first party on each side only) PALMER V. CHAMPION

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

     I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.  X   II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950. \*Also complete AO 120 or AO 121 for patent, trademark or copyright cases     III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.     IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.     V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☒

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).YES ☐ NO ☒A. If yes, in which division do all of the non-governmental parties reside?Eastern Division ☐ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☒ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Christopher M. Lefebvre, Esq.ADDRESS P.O. Box 479, Pawtucket, RI 02862TELEPHONE NO. (401) 728-6060

JS 44 (Rev. 3/99)

## CIVIL COVER SHEET

The JS-44 civil cover sheet and information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## 1. (a) PLAINTIFFS

AMY PALMER

## DEFENDANTS

CHAMPION MORTGAGE

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Plymouth  
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Christopher M. Lefebvre, Esq #4019  
PO Box 479, Pawtucket, RI 02862-0479

ATTORNEYS (IF KNOWN)

## II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)  
2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PTF	DEF		PTF	DEF
Citizen of This State	1		Incorporated or Principal Place of Business In This State	4	4
Citizen of Another State	2	2	Incorporated and Principal Place of Business In Another State	5	5
Citizen or Subject of a Foreign Country			Foreign Nation		3

## IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
10 Insurance 20 Marine 30 Miller Act 40 Negotiable Instrument 50 Recovery of Overpayment & Enforcement of Judgment 51 Medicare Act 52 Recovery of Defaulted Student Loans (Excl. Veterans) 53 Recovery of Overpayment of Veteran's Benefits 160 Stockholders Suits 190 Other Contract 195 Contract Product Liability	PERSONAL INJURY 110 Airplane 115 Airplane Product Liability 320 Assault Libel & Slander 330 Federal Employers Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury	PERSONAL INJURY 362 Personal Injury - Med. Malpractice 365 Personal Injury - Product Liability 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY 370 Other Fraud 371 Truth In Lending 380 Other Personal Property Damage 385 Property Damage Product Liability	10 Agriculture 20 Other Food & Drug 25 Drug Related Seizure of Property 21 USC 881 30 Liquor Laws 40 R.R. & Truck 50 Airline Regs. 360 Occupational Safety/Health 90 Other LABOR 710 Fair Labor Standards Act 20 Labor/Mgmt Relations 730 Labor/Mgmt Reporting & Disclosure Act 740 Railway Labor Act 90 Other Labor Litigation 791 Emp't Ret Inc. Security Act	122 Appeal 28 USC 158 423 Withdrawal 28 USC 157 PROPERTY RIGHTS 320 Copyrights 330 Patent 340 Trademark SOCIAL SECURITY 761 HIA (1395ff) 762 Black Lung (923) 83 DIWC/DIWWW(405(g)) 764 SSID Title XVI 85 RSI (405(g)) FEDERAL TAX SUITS 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS - Third Party 26 USC 7609	100 State Reapportionment 110 Antitrust 130 Banks and Banking 150 Commerce/ICC Rates/etc 160 Deportation 170 Racketeer Influenced and Corrupt Organizations 910 Selective Service 350 Securities/Commodities/Exchange 375 Customer Challenge 12 USC 3410 381 Agricultural Acts 382 Economic Stabilization Act 393 Environmental Matters 394 Energy Allocation Act 395 Freedom of Information Act 300 Appeal of Fee Determination Under Equal Access to Justice 950 Constitutionality of State Statutes 890 Other Statutory Actions
REAL PROPERTY 10 Land Condemnation 20 Foreclosure 30 Rent Lease & Ejectment 40 Torts to Land 45 Tort Product Liability 90 All other Real Property	CIVIL RIGHTS 441 Voting 442 Employment 443 Housing Accommodations 444 Welfare 440 Other Civil Rights	PRISONER PETITIONS 510 Motions to Vacate Sentence HABEAS CORPUS: 530 General 335 Death Penalty 340 Mandamus & Other 50 Civil Rights 55 Prison Condition			

## V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ Reinstated or Reopened ☐ Transferred from another district (specify) ☐ Multidistrict Litigation ☒ Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE.  
DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Complaint for actual, statutory and punitive damages, costs, and attorney fees pursuant to TILA 15 U.S.C. 1601 et. seq. (TRUTH IN LENDING) and MGL §140D

## VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐

DEMAND \$

CHECK YES only if demanded in Complaint

JURY DEMAND: ☒ YES ☐ NO

## VIII. RELATED CASE(S) (See instructions): IF ANY

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_